

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Russell Bowers,)	C.A. No. 0:04-21965-CMC-BM
)	
Plaintiff,)	
)	
v.)	OPINION and ORDER
)	
South Carolina Department of Corrections,)	
Unknown Officers, Administrators or)	
Employees of the S.C. Department of)	
Corrections, Individually and in their)	
Official Capacities,)	
)	
Defendants.)	
)	

This matter is before the court on Plaintiff's complaint seeking relief under 42. U.S.C. § 1983 and a state cause of action for gross negligence. Plaintiff seeks monetary damages from Defendants due to their alleged deliberate indifference to Plaintiff's alleged exposure to environmental tobacco smoke (ETS, more commonly known as "second-hand smoke"). Plaintiff asserts this alleged indifference amounts to gross negligence on the part of Defendants. Plaintiff filed his complaint in state court on July 1, 2004, and it was removed to this court on August 23, 2004. Defendants filed a motion for summary judgment on June 20, 2005, to which Plaintiff chose not to respond.¹

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation. On August 9, 2005, the Magistrate Judge issued a Report recommending Defendants' motion for summary judgment be granted.

The Magistrate Judge makes only a recommendation to this court. The recommendation has

¹The Magistrate Judge did not enter an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) because Plaintiff is represented by counsel.

no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Defendants are entitled to summary judgment in this matter as to both the federal and state causes of action.

IT IS THEREFORE ORDERED that Defendants' motion for summary judgment is hereby **granted** and this matter is dismissed with prejudice.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 12, 2005